



**Kimeu v Republic (Criminal Appeal E005 of 2025)  
[2025] KEHC 12561 (KLR) (9 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL APPEAL E005 OF 2025  
RC RUTTO, J  
SEPTEMBER 9, 2025**

**BETWEEN**

**DUNCAN WAMBUA KIMEU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant is facing charges of robbery with violence contrary to section 295 as read with section 296 (2) of the [Penal Code](#). The particulars of the Charge Sheet are that on that 29<sup>th</sup> day of April 2024 at Kambai Junction along Kangundo Mwala road in kangundo Sub-County within Machakos County jointly with others not before court, they robbed Titus Muteti Kilika, one mobile phone handset make Samsung IMEI 3XXXXXXXXXX47 paired to 07XXXXXX76, a National Identity Card, NHIF card, medical practicing card, ATM cards of Equity, Family, Sidian and Shirika Link Banks, and cash, all valued at Kshs.1,503,111/- and that immediately before or immediately after the time of such robbery, threatened to use actual violence to the said Titus Muteti Kilika.
2. Upon arraignment and plea taking, the trial Magistrate granted each accused person bail in the sum of Kshs.5,000,000, with a surety of similar amount. Subsequently however, on 4<sup>th</sup> December 2024, the State filed an application seeking to vacate the bond terms granted. The application was supported by an affidavit sworn by one, Sergeant Fredrick Maina, who expressed concern that if the accused were released, there was a high risk of witness interference.
3. Sergeant Maina stated that the 1st accused (the appellant herein) was known to the complainant, who had received anonymous threats warning him of dire consequences if he pursued the case. He requested that the bond terms be suspended until the case was finalized or until key witnesses testified.
4. In a ruling delivered on 21<sup>st</sup> January 2025, the trial magistrate allowed the State’s request and revoked the bond granted to the 1<sup>st</sup> accused (the appellant herein).



5. Dissatisfied with the cancellation of the bond, the appellant filed this petition of appeal. He urged that the trial court erred in law and in fact by: assuming appellate jurisdiction and overturning its own decision to grant bond of Kshs.5 million; failing to appreciate the efforts made to secure and fulfil the bond terms; contradicting itself in two separate rulings, one dated 18<sup>th</sup> December 2024 where the trial court suspended bond approval for 21 days to allow investigations into alleged threats of intimidation of witnesses and another dated 20<sup>th</sup> January 2025 which relied on the findings that threats were made by the 2<sup>nd</sup> accused person, and not the appellant; relying on a report from the Investigating Officer containing incomplete findings and referenced to events that occurred between April-June 2024 before the appellant's arrest in September 2024. The appellant thus urged the Court to allow the appeal, reinstate the ruling delivered on 18<sup>th</sup> October 2024 and set aside the ruling delivered on 20<sup>th</sup> January 2025. In essence, reinstate his bond terms.
6. The respondent opposed the appeal through submissions dated 1<sup>st</sup> April 2025. They outlined the background of the case and urged that the trial court had the mandate to review bail/bond at any stage of the proceedings. They relied on the case of *R v Diana Suleiman Said & Anor* (2014) eKLR to buttress this argument.
7. The respondent submitted that the appellant's reference to double jeopardy was misplaced, as the concept does not apply in the context of bail review. They emphasized that bail is not an absolute right and may be varied if compelling reasons are presented. It urged that the compelling reason ventilated vide the application for bond cancellation had not been brought to the attention of the court when the court was issuing the bond terms.
8. The respondent urged the Court to uphold the trial court's decision, arguing that compelling reasons had been demonstrated. They urged that a strong case had been made for the cancellation of the bond since it was established that while the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were jointly charged with violently robbing the complainant, the complainant received threats traced to the 2<sup>nd</sup> accused who was found to have been in constant communication with the 1<sup>st</sup> accused person. Further that the pre-bail report findings were unfavourable to the appellant. They concluded that the appeal lacked merit and it should be dismissed.
9. The victim also filed an objection statement dated 8<sup>th</sup> April 2025 in opposition of the bail/bond appeal. He stated that after the incident he received threatening phone calls intended to intimidate him to withdraw the case, that the appellant is not a first time offender, that it took nearly six months to arrest the accused which shows a likelihood of absconding court and he is a flight risk; that he continues to live in fear and the appellant's release on bond will intensify the fear since he abducted, assaulted and physical harmed him before robbing him. He urged the Court to reject the appeal for bond and uphold the lower court's decision.
10. Article 49(1)(h) of the *Constitution* provides that:-  
An accused person has the right ...
  - (h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released. Emphasis added.
12. The compelling reasons are espoused in Section 123A of the *Criminal Procedure Code* which gives the parameters for the grant of the right to bail as follows:
  - (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—



- (a) the nature or seriousness of the offence;
  - (b) the character, antecedents, associations and community ties of the accused person;
  - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
  - (d) the strength of the evidence of his having committed the offence.
- (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—
- (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
  - (b) should be kept in custody for his own protection.
11. The *Kenya Judiciary's Bail and Bond Policy Guidelines*, March 2015 at page 25 which sets out judicial policy on bail as follows: The following procedures should apply to the bail hearing:
- (a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
    - a. That the accused person is likely to fail to attend court proceedings; or
    - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
    - c. That the exception to the right to bail stipulated under Section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
    - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
    - e. That the accused person is likely to interfere with witnesses or evidence; or
    - f. That the accused person is likely to endanger national security; or
    - g. That it is in the public interest to detain the accused person in custody.
12. In the case of *Republic v Pascal Ochieng Lawrence 2014* (KEHC) 6587 KLR the court held, thus:
- “It is to be noted that unlike in the past when an accused person had to demonstrate why he should be released on bail/bond, that duty now properly belongs to the State. The court in exercising its discretion as to whether or not to grant bond is however to be guided by the following parameters:-
- a. the seriousness of the offence although this carried greater weight under the old constitutional dispensation;
  - b. the weight of the evidence so far adduced if the case is partly heard;
  - c. the possibility of the accused interfering with witnesses;



- d. the safety and protection of the accused once he/she is released on bail/bond;
  - e. whether the accused will turn up for trial;
  - f. Whether the release of the accused will jeopardize the security of the community.”
13. The Appellant challenges the trial court’s decision to vacate previously granted bond terms. It is undisputed that on 18th December 2024, the trial court delivered a ruling suspending approval of the bond security for 21 days to allow the Investigating Officer (IO) to conclude inquiries into alleged anonymous threats made to the complainant. Subsequently, on 20th January 2025, the IO presented evidence indicating that the 2<sup>nd</sup> accused, Dennis Ndolo, had been in constant communication with the 1<sup>st</sup> accused, Duncan Wambua, and had used the same number to threaten the complainant. It was further demonstrated that both accused persons had other pending criminal charges. The trial court considered the totality of this evidence and found that compelling reasons had been established to justify cancellation of the bond.
  14. This Court finds that the trial court, being properly seized of the matter, exercised its discretion judiciously in reviewing and ultimately revoking the bond. It is well established that the grant of bail or bond is not a one-time event but a continuing judicial process subject to review. In *Mwangi v Republic* [2024] KEHC 9453 (KLR), the High Court emphasized that the right to bail is not absolute and may be denied where compelling reasons exist, including risk of flight or interference with witnesses. Similarly, in *Republic v Pascal Ochieng Lawrence* (2014) KEHC 6587 KLR, the Court outlined key parameters for bail determination, including seriousness of the offence, risk of witness interference, and public safety.
  15. In light of the foregoing, this Court finds that the trial court acted within its mandate and correctly applied the law when it cancelled the bond previously granted to the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. The decision was grounded in credible evidence, procedural fairness, and a proper appreciation of the risks posed to both the complainant and the integrity of the trial. Suffices it to say that when the trial court initially granted bond to the appellant, it was not seized of the compelling reasons that were later presented. The argument that the court relied on events that occurred prior to the arrest is misplaced. The IO ably demonstrated that following the commission of the offence, the accused persons set out to intimidate the complainant in an effort to prevent them from pursuing the case. This constituted a compelling reason enough in line with the above legal basis to cancel bond terms.
  16. I hasten to add that our criminal justice system is anchored on equality before the law as by the *Constitution* decreed. Consequently, just as an accused person may approach the same trial court seeking review of the bond terms, so as to reduce the same, the State equally has the right to approach the trial court to request a review including cancellation of the bond terms, where there are sufficient and compelling reasons to believe the bond is or will be abused. Such abuse may include witness interference and/or intimidation. This is precisely the route the respondent followed in this case. It cannot therefore be heard to come from the appellant that the trial court erred by revisiting its own decision. That process was not an appeal process. It was a lawful review based on new and compelling evidence.
  17. Accordingly, the appeal lacks merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**RHODA RUTTO**



**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Court Assistant

